

**STATE OF MICHIGAN**  
**DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**  
**Before the Director of Insurance and Financial Services**

**Gregory C. Dziewicki**  
**Petitioner**

**v**

**Department of Insurance and Financial Services**  
**Respondent**

**Case No. 13-900-L**  
**Docket No. 13-000138-OFIR**

---

Issued and entered  
this 30<sup>th</sup> day of August 2013  
by R. Kevin Clinton  
Director

**FINAL DECISION**

**I. BACKGROUND**

This case concerns the application of Gregory Dziewicki (Petitioner) for a resident insurance producer license. Petitioner's application was denied by the Department of Insurance and Financial Services (DIFS) in a Notice of License Denial issued October 24, 2012.

Petitioner challenged the license denial. Respondent filed a motion for summary decision. The Petitioner filed a brief in opposition to the motion. The brief included an affidavit from the Petitioner dated April 22, 2013. (Hearing Exhibit B.) A hearing on the motion was held on April 30, 2013. The administrative law judge issued a Proposal for Decision on May 14, 2013 recommending that the license denial be upheld. Neither party filed exceptions.<sup>1</sup>

**II. FINDINGS OF FACT**

The Petitioner was first licensed as an insurance producer in 1974. He has also maintained a license as an insurance counselor in Michigan. The counselor license was not affected by any of the events addressed in this case.

In May 2009, the Petitioner failed to complete, within the required time, the continuing education requirements for a resident insurance producer. Petitioner requested an extension of time to complete his continuing education obligation. The hearing record does not include any document establishing whether this request was granted or denied. The Petitioner completed the

---

1. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Comm*, 136 Mich App 52 (1984).

continued education requirements before June 1, 2009. (Petitioner's April 22, 2013 affidavit, paragraph #4.)

The Petitioner's producer license was not reinstated by DIFS staff. According to the Petitioner (April 22 affidavit, paragraph #6), this denial was based on a 2005 disciplinary case in which he was found to have collected improper fees from numerous clients without disclosing the nature of the fees to the clients and using the funds for his own financial obligations. In connection with that matter, the agency and the Petitioner entered into a consent order (Hearing Exhibit #2) that required the Petitioner to pay a fine of \$1,500.00 and restitution to clients he had improperly billed. The consent order did not revoke or suspend the Petitioner's producer license. The details of the 2005 enforcement case are set forth in Findings of Fact #1 through #13 of the PFD which are adopted as part of this Final Decision.

When the Petitioner completed his continuing education, DIFS staff declined to reinstate the license. The Petitioner did not challenge this determination and he remained without a producer license.<sup>2</sup>

In July 2012, Petitioner applied for a new resident insurance producer license. (Hearing Exhibit #1.) On his application, the Petitioner answered "No" to the question, "Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?" The DIFS staff reviewing the Petitioner's license application concluded (Hearing Exhibit #5) that the Petitioner's failure to disclose the 2005 administrative proceeding constituted a violation of section 1239(1)(a) of the Insurance Code which provides:

In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

---

2. Finding of Fact #19 of the PFD states that the Petitioner's license was revoked for his failure to timely complete his continuing education requirements. When an individual fails to complete continuing education requirements, the license becomes inactive; it is not revoked. For this reason, Finding of Fact #19 is not adopted.

In the notice of license denial, DIFS staff cited the Insurance Code violations in the 2005 consent order as further reason to deny the producer license. Section 1205(1)(b) of the Insurance Code provides:

A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

\* \* \*

(b) Has not committed any act listed in section 1239(1).

The DIFS staff cited various acts described in section 1239(1) in support of the license denial. Section 1239(1) is reprinted below in its entirety. The subsections cited in the license denial are in bold type.

In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

- (a) **Providing incorrect, misleading, incomplete, or materially untrue information in the license application.**
- (b) **Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.**
- (c) **Obtaining or attempting to obtain a license through misrepresentation or fraud.**
- (d) **Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.**
- (e) **Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.**
- (f) Having been convicted of a felony.
- (g) **Having admitted or been found to have committed any insurance unfair trade practice or fraud.**

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

(i) Having an insurance producer license or its equivalent denied, suspended, or revoked in any other state, province, district, or territory.

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction.

(k) Improperly using notes or any other reference material to complete an examination for an insurance license.

(l) Knowingly accepting insurance business from an individual who is not licensed.

(m) Failing to comply with an administrative or court order imposing a child support obligation.

(n) Failing to pay the single business tax or the Michigan business tax or comply with any administrative or court order directing payment of the single business tax or the Michigan business tax.

### III. CONCLUSIONS OF LAW

The Petitioner's failure to disclose the 2005 disciplinary action was a materially false response to a question on the licensing application. The Petitioner justified his answer by arguing that he assumed the department was aware of the 2005 case and, for that reason, he was not required to disclose the proceeding himself. (April 22 affidavit, paragraph #9.)

By failing to disclose the 2005 disciplinary action, the Petitioner has provided "incorrect, misleading, incomplete, or materially untrue information in the license application" as referenced in section 1239(1)(a) of the Insurance Code. The Petitioner's failure to disclose the 2005 action requires license denial under section 1205(1) of the Insurance Code. MCL 500.1205(1).

The Petitioner also argued that his 2012 license application decision should not cite his 2005 disciplinary action because doing so would constitute a retroactive application of a statute which was not in effect in 2005. (Petitioner's Brief in Opposition, pages 6-9.) This argument is based on the fact that a 2009 change in the Insurance Code mandated denial of a license to any person who had been found in violation of the Insurance Code. (It had previously been within the Director's discretion to grant a producer license in such a circumstance.)

The Petitioner's brief in opposition cites *King v State of Michigan*, 488 Mich 208 (2010) in support of that argument. In the *King* case, the Supreme Court reversed an order of this de-

partment to revoke the producer license of an insurance producer who was erroneously issued a license. However, in contrast to the *King* case, DIFS is not attempting to revoke an existing producer license. The Petitioner has no producer license. He has been without one since 2009. He is to be held to the same standards as any other unlicensed individual seeking an insurance producer license. His application must be judged by the standards which presently exist for licensure. The Petitioner does not meet those standards.

Several of the other subsections from 1239(1) cited in the license denial are not appropriate in the context of a motion for summary decision. Subsections (c), (d), and (h) require a finding that the applicant acted from malice or with the intent to deceive. In the absence of a hearing, such determinations of motivation cannot be made. The Director therefore finds that subsections (c), (d), and (h) may not be cited in the context of the present motion, as a reason to deny the license sought by the Petitioner. Subsections (e) and (g) also require findings as to motivation, but those violations were established in the 2005 consent order which the Petitioner signed. Consequently, violations of subsections (e) and (g) are facts not in dispute and may be cited in support of the motion for summary decision and the license denial.

The Director finds that, by failing to disclose the prior disciplinary action, Petitioner submitted an incorrect, misleading and materially untrue answer on his producer license application. The requested insurance producer license should be denied for that reason, as required by section 1205(1)(b) and 1239(1)(a), (e), and (g) of the Insurance Code.

The Proposal for Decision is attached. The findings and recommendation in the Proposal for Decision consistent with this Final Decision, are adopted.

### III. ORDER

The refusal to issue an insurance producer license to Petitioner is upheld.



---

R. Kevin Clinton  
Director

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**IN THE MATTER OF:**

**Docket No.: 13-000138-OFIR**

**Gregory C. Dziewicki,  
Petitioner**

**Case No.: 13-900-L**

**v**

**Agency: Department of  
Insurance and  
Financial Services**

**Office of Financial and Insurance  
Regulation,  
Respondent**

**Case Type: DIFS-Insurance**

**Filing Type: Appeal**

---

**Issued and entered  
this 14<sup>th</sup> day of May, 2013  
by: Kandra Robbins  
Administrative Law Judge**

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance of a Notice of Hearing dated February 13, 2013, scheduling a contested case hearing for March 12, 2013. The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on January 28, 2013, and an Order Referring Petition for Hearing dated January 28, 2013, issued by Annette E. Flood, Chief Deputy Commissioner of the Office of Financial and Insurance Regulation<sup>1</sup>.

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated October 24, 2012, a copy of the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, received November 21, 2012; and Respondent's Motion for Summary Decision and Brief in Support, dated January 28, 2012. On February 19, 2013, Respondent filed a Motion for Hearing on Motion for Summary Decision. On February 27, 2013, the undersigned issued an Order for Adjournment and Scheduling Hearing on Motion for Summary Decision. On March 4, 2013, Petitioner submitted a Motion to Adjourn

---

<sup>1</sup> The Office of Financial and Insurance Regulation authority was transferred to the Department of Insurance and Financial Services (DIFS) pursuant to Executive Order 2013-1.

Hearing. On March 6, 2013, the undersigned issued an Order Granting Adjournment, rescheduling the hearing on the motion to April 30, 2013. The Order Granting Adjournment was sent with Proof of Service to Petitioner at his last known address of record. On April 22, 2013, Petitioner filed Petitioner's Brief in Opposition to Motion for Summary Decision And Request for Summary Decision In His Favor.

On April 30, 2013, the hearing was held as scheduled. Petitioner, Gregory C. Dziewicki and Attorney Timothy Knowlton appeared on behalf of Petitioner. William R. Peattie appeared as staff attorney on behalf of Respondent.

Respondent's attorney and Petitioner's attorney presented oral argument on the Motion for Summary Decision. The following exhibits were offered by Respondent and admitted into evidence:

1. Respondent's Exhibit No. 1 is a copy of Individual Licensee Application, dated July 23, 2012.
2. Respondent's Exhibit No. 2 is a copy of a Consent Order and Stipulation In The Matter Of Gregory C. Dzwicki, Enforcement Case No. 05-3005, dated May 10, 2005.
3. Respondent's Exhibit No. 3 is a copy of a Letter from Krystal Badyrka, Office of Financial Insurance Regulation to Petitioner, dated August 16, 2012.
4. Respondent's Exhibit No. 4 consists of a copy of a letter from Gregory C. Dziewicki to Ms. K. Badyrka with attachment.
5. Respondent's Exhibit No. 5 is a copy of a Notice of License Denial and Opportunity for Hearing in the matter of Gregory C. Dziewicki (Petitioner), signed by Jean M. Boven, Deputy Commissioner, dated October 24, 2012.

The following exhibits were offered by Petitioner and admitted into evidence:

1. Petitioner's Exhibit A is a Department of Licensing and Regulatory Affairs on-line screen page printout of a Qualification History for an Insurance Licensee.
2. Petitioner's Exhibit B is an Affidavit of Gregory C. Dziewicki, dated April 22, 2013.

3. Petitioner's Exhibit C consists of a letter to Ms. Tracey Lord Bishop, Administrator, Office of Financial and Insurance Regulation, dated May 18, 2009. A letter To Whom It May Concern from John R. Hunt, D.O., dated March 4, 2009.

The Respondent's Motion for Summary Decision is granted. No witnesses were presented. The record was closed at the conclusion of the hearing.

### **ISSUES AND APPLICABLE LAW**

The issue now presented is whether summary decision has been properly granted for Respondent on Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(a)(b)(c)(d)(e)(g) and (h) of the Insurance Code. These statutory sections provide in pertinent part:

Sec. 1205. (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following: \* \* \*

- (b) Has not committed any act listed in section 1239(1).  
MCL 500.1205(1)(b). (Emphasis supplied).

Sec. 1239. (1) In addition to any other powers under this act . . . the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: \* \* \*

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.
- (b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.
- (c) Obtaining or attempting to obtain a license through misrepresentation or fraud.



- (d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
- (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

\* \* \*

- (g) Having admitted or been found to have committed any insurance unfair trade practice or fraud.
- (h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. (Emphasis supplied)

#### **FINDINGS OF FACT**

Based on the entire record in this matter, including the pleadings, the following findings of fact are established:

1. Petitioner, Gregory C. Dziewicki, first became licensed as a Michigan insurance agent in Michigan in 1974. [Pet. Exh. A]
2. In 2001, Respondent began advancing all or some of his non-profit clients' premiums for Special Events Coverage. [Resp. Exh.2]
3. In 2001, Respondent began adding an additional service charge above and beyond the premium quoted by the insurer underwriting the Special Events Coverage in order to cover his own obligations, pay his clients' Special Events Coverage, and/or cover non-profits who never paid their entire Special Events Coverage. [Resp. Exh. 2]
4. Respondent did not always tell non-profits that he was assessing additional service charges to their premiums. [Rep. Exh. 2]
5. Respondent continued the practice of charging a service fee to his non-profit clients for approximately four years, ceasing in October 2004. [Resp. Exh. 2]

6. Respondent deliberately provided false information to his carrier that a particular form of coverage had not been purchased by the client when, in fact, it had been purchased by the client (non-disclosed coverage). [Resp. Exh. 2]
7. Respondent collected premiums for the non-disclosed coverage and used them to pay for his own financial obligations, pay clients' Special Event Coverage, and/or cover non-profits who never paid their entire Special Event Coverage. [Resp. Exh. 2]
8. Respondent continued this illegal, deceptive, dishonest and fraudulent practice for approximately two years, ceasing in October 2004. [Resp. Exh. 2]
9. In October 2004, Respondent was approached about being the President of the Michigan Association of Fairs & Festivals, an organization to which many of his non-profit clients belonged. [Resp. Exh. 2]
10. After this offer, Respondent ceased the above practices and reported them to Office of Financial and Insurance Services. [Resp. Exh. 2]
11. On May 10, 2005, a Consent Order and Stipulation (Consent Order) was entered by Commissioner Linda A. Watters. In the Consent Order, Petitioner was ordered to cease and desist from operating in such a manner as to violate Sections 1207(1), 2005(a) 2018 and 1239(e) and (g) of the Insurance Code, *supra*. [Resp. Exh. 2]
12. In the Consent Order, Petitioner was also required to pay a civil fine in the amount of \$2,500.00 and to make restitution to those clients who he charged service fees and to those clients from whom he collected premium for coverage that was not placed. [Resp. Exh. 2]
13. Petitioner satisfied the requirements of the Consent Order. [Oral Argument]
14. Resident producers and solicitors must earn 24 credits of State-approved education credit every two years. [Oral Argument]
15. Petitioner was required to complete his continuing education requirement by February 1, 2009. [Pet. Exh. B]
16. Petitioner had not completed the continuing education requirement by February 1, 2009. [Pet. Exh. B]

17. On March 4, 2009, John R. Hunt, D.O. sent a letter to Respondent regarding an insurance continuing education waiver and indicating that Petitioner was not capable of any classroom work or study. [Pet. Exh. C]
18. On May 18, 2009, Petitioner submitted a letter to Tracey Lord Bishop, Administrator, Office of Financial and Insurance Regulation, requesting additional time to complete the continuing education requirements. Petitioner requested an extension until June 30, 2009. [Pet. Exh. C]
19. It is undisputed that Petitioner's resident producer's license had been revoked for failure to complete the continuing educational requirements. However, there has been no evidence submitted as to the date that this revocation occurred other than 2009.
20. Petitioner applied to renew his resident producer's license in 2009. At that time, he was denied under section 1205 because Petitioner had previously been found to have violated Section 1239(1)(e) and (g) of the Insurance Code, *supra*. [Pet. Exh. B]
21. Petitioner acknowledges that in 2009 he was informed that the regulations changed and because of the findings in the Consent Order, he did not meet the requirements. [Pet. Exh. B]
22. On or about July 23, 2012, Petitioner submitted an Individual Licensee Application online to become licensed as a resident insurance producer in the state of Michigan. [Resp. Exh. 1]
23. Petitioner responded "no" on the Individual Licensee Application to a question asking whether he had ever been involved in any administrative proceedings. [Resp. Exh. 1]
24. In answering "no" to the question described, Petitioner provided misleading information on the Individual Licensee Application and has attempted to obtain a resident insurance producer license through misrepresentation. [Resp. Exh. 1]
25. On October 24, 2012, Jean M. Boven, Deputy Commissioner for Respondent, issued a Notice of License Denial and Opportunity for Hearing. [Notice of License Denial]
26. On October 28, 2012, Petitioner submitted a petition for contested case hearing to appeal the Notice of License Denial. [Applicant's Petition]

**CONCLUSIONS OF LAW**

Respondent has the burden of proof in this matter to show by a preponderance of the evidence the legal basis for its action to deny Petitioner's application for licensure. See MCL 500.1239(2). Under Sections 1205 and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a resident insurance producer license where an applicant has provided incorrect, misleading, incomplete, or materially untrue information in the license application; violated any insurance laws or violated any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner; obtained or attempted to obtain a license through misrepresentation or fraud; improperly withheld, misappropriated, or converted any money or property received in the course of doing insurance business; intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance; having admitted or been found to have committed any insurance unfair trade practice or fraud or used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

Under Rule 11(c), summary decision may be granted where there is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law. 1983 AACRS, R 500.2111(c).

Based on the above findings of fact, it is concluded that Respondent has shown that there is no genuine issue as to any material fact concerning Petitioner's conduct and that it is entitled to a decision in its favor as a matter of law. Further, a preponderance of the evidence shows that Petitioner was properly denied licensure as a resident insurance producer in the state of Michigan under Sections 1205(1)(b) and 1239(1)(a)(b)(c)(d)(e)(g) and (h) of the Insurance Code, *supra*.

Although Petitioner contends that the Insurance Code, *supra*, is being applied retroactively, this is not the case. Petitioner was not licensed as a resident insurance in 2012 when he filed this Individual Licensee Application. The Insurance Code, *supra*, requirements to obtain a resident producer license was applied to Petitioner. Petitioner does not meet the requirements for licensure under Section 1205.

Petitioner did provide incorrect, misleading, incomplete or materially untrue information in the license application when he answered no regarding involvement in an administrative hearing. It is found that this was done to obtain or attempt to obtain a license through misrepresentation or fraud. Petitioner was previously found to have engaged in intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance and admitted or been found to have committed any insurance unfair trade practice or fraud.

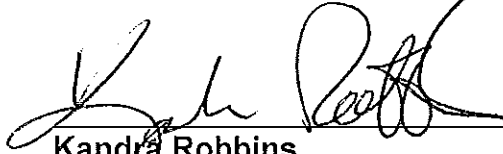
**PROPOSED DECISION**

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order, including the summary decision ruling in Respondent's favor;
2. That the Commissioner deny Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(a)(b)(c)(d)(e)(g) and (h) of the Insurance Code; and
3. That the Commissioner take any other action in this matter deemed appropriate under applicable provisions of the Insurance Code.

**EXCEPTIONS**

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.

  
Kandra Robbins  
Administrative Law Judge